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OFFICE OF PETITIONS

In re Application of	:
de Jong et al.	:
Application No. 10/040,270	: DECISION GRANTING
Filed: 29 October, 2001	: PETITION
Attorney Dckt No. SUN-P6990	:

This is a decision on the petition under 37 CFR 1.53(e) filed on 13 May, 2002, requesting that the above-identified application be accorded a filing date of 29 October, 2001, with Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification (description and claims) and drawing Figures 18 and 20 as a part of the original disclosure.

The petition is **GRANTED**.

On 29 October, 2001, the application was filed.

On 19 March, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application stating that the application had been accorded a filing date of 29 October, 2001, but that, *inter alia*, Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification (description and claims) and drawing Figures 18 and 20 appeared to have been omitted from the application.

In response, on 13 May, 2002, the present petition was filed. Petitioners argue that Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification and drawing Figures 18 and 20 were filed on 29 October, 2001. In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt bears a USPTO "Office date" stamp dated 10/29/01 and the above-identified application number, identifies the application by first named inventor's last name, invention title, and attorney docket number, and itemizes, *inter alia*, Application - Utility (93 pgs. with cover & abstract) and Drawings 55 # sheets

includes 62 figures. Petitioners also supplied a copy of the specification and drawings.

A review of the official file reveals that Pages 1-15, 17-51, 60-67, 71-73, 75-78, 80, 81, 87, 88, and 90-92 of the specification and 53 sheets of drawings containing Figures 1A-B, 2-8, 9A-B, 10-17, 19, 21-27, 28A-B, 29, 30A-B, 31, 32, 33A-B, 34-41, 42A-B, 43A-C, 44, 45, 46A-D, and 47-51, received on 29 October, 2001, are located therein. It is obvious that the entire specification, including the description, claims and abstract, consisted of 92 rather than 93 pages. However, since the individual at the USPTO who compared petitioners' postcard to the items received found that the specification (including claims and abstract) as filed contained at least 93 pages, the evidence is persuasive that Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification and two sheets of drawings containing Figures 18 and 20 were among the application papers received on 29 October, 2001, but were subsequently misplaced in the U.S. Patent and Trademark Office. The application, including Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification and two (2) sheets of drawings containing Figures 18 and 20, is therefore entitled to a filing date of 29 October, 2001.

The Notice mailed on 19 March, 2002, is vacated to the extent that it states that Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification (description and claims) and Figures 18 and 20 appeared to have been omitted. As the petition was necessitated by an error on the part of the Office, the petition fee of \$130.00 will be credited to counsel's deposit account, No. 50-1698.

The application will be processed using Pages 1-15, 17-51, 60-67, 71-73, 75-78, 80, 81, 87, 88, and 90-92 of the specification and 53 sheets of drawings containing Figures 1A-B, 2-8, 9A-B, 10-17, 19, 21-27, 28A-B, 29, 30A-B, 31, 32, 33A-B, 34-41, 42A-B, 43A-C, 44, 45, 46A-D, and 47-51, filed on 29 October, 2001, and the copy of Pages 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification (description and claims) and the two (2) sheets of drawings Figures 18 and 20 supplied on 13 May, 2002 as the original disclosure. The copies of the other application papers supplied on 13 May, 2002, will not be used for processing or examination, but will be retained in the application file.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 29 October, 2001, using the application papers filed on that date and the

copy of 16, 52-59, 68-70, 74, 79, 82-86, and 89 of the specification (description and claims) and the two (2) sheets of drawings Figures 18 and 20 supplied on 13 May, 2002, and for an indication in Office records that 55 sheets of drawings and 11 claims were present on filing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.



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for Patent Examination Policy